

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ROBERT DOUGLAS LAHAISE,
Deceased.

STEVEN R. SCHNEIDER, Personal
Representative of the ESTATE OF ROBERT
DOUGLAS LAHAISE,

UNPUBLISHED
October 18, 2007

Petitioner-Appellee,

v

KIM DEMARS,

No. 274122
Lapeer Probate Court
LC No. 05-034402-DA

Respondent-Appellant.

Before: Owens, P.J., and Bandstra and Davis, JJ.

MEMORANDUM.

In this wrongful death case, respondent appeals from the probate court's order granting petitioner authority to settle the action. We dismiss for lack of jurisdiction. We decide this case without oral argument in accordance with MCR 7.214(E).

An order granting a personal representative authority to settle a wrongful death claim is not among those defined by court rule as final orders appealable to this Court by right. MCR 5.801(B). Appeals of order from the probate court that are not appealable by right to this court, whether interlocutory or final, normally lie in the circuit court. MCR 5.801(C) and (D).

Appeals from the probate court that would normally be subject to the jurisdiction of the circuit court may proceed directly to this Court, if the probate judge "certifies that the order involved a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation." MCR 5.801(F). However, our review of the record brings no such certification to light. We further note that this appeal concerns fact-sensitive questions, involving respondent's right to present certain evidence concerning causation of the accident resulting in the decedent's death, not any controlling question of law.

Although this Court accepted respondent's claim of appeal, defects in subject matter jurisdiction may be asserted, or acknowledged, at any time. See *People v Richards*, 205 Mich

App 438, 444; 517 NW2d 823 (1994). A court must be vigilant in respecting the limits of its jurisdiction. *Straus v Governor*, 230 Mich App 222, 227; 583 NW2d 520 (1998), aff'd 459 Mich 526; 592 NW2d 53 (1999). Because the order appealed from is appealable only by leave, not by right, we do not have the option of simply transferring it to the circuit court. See MCR 5.801(E). Accordingly, our duty is to dismiss. See *Fox v Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965).

For these reasons, we dismiss this case, without prejudice, and express no opinion concerning the merits of the arguments presented.

Dismissed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis